

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 04-CR-80432-DT-01

SETH DAVID SPANN,

Defendant.

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**OPINION AND ORDER DENYING DEFENDANT'S "MOTION FOR MODIFICATION  
OF SENTENCE" PURSUANT TO 18 U.S.C. § 3582(c)(2)**

On July 23, 2008, the defendant filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2). The motion is based on the passage of an amendment to the federal Sentencing Guidelines, recently given retroactive effect, that lowered the range applicable to the cocaine base offense for which Defendant was convicted. The government was not asked for concurrence in the object of the motion, and the court could deny the motion for that reason alone, see E. D. Mich. L. R. 7.1(a), but will not since the government has responded and noted the possibility of a stipulated proposed sentencing reduction at an appropriate time in the future with a favorable 1B1.10 report from the probation department.

The defendant's projected release date is October 26, 2016. (Def.'s Mtn. at 2.) Recalculating the defendant's sentencing guidelines under the present circumstances could result in a 14-month reduction. (Govt.'s Resp. at 2.) Subtracting 14 months from October, 2016, results in a hoped-for earlier release date around August, 2015. If the court were to reduce the sentence now, the defendant's future conduct could reflect

behavior in prison that, had it occurred and come to light earlier, would have disqualified him from favorable discretionary consideration. Because a *relevant* report will not be available for about another seven years, the court views the motion as unripe.

Accordingly,

IT IS ORDERED that the Defendant's "Motion for Modification of Sentence" [Dkt. # 41] is DENIED WITHOUT PREJUDICE.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: September 18, 2008

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 18, 2008, by electronic and/or ordinary mail.

s/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522